

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF COMMUNITY ASSISTANCE**

**CHAPTER 1740-1
WASTEWATER FINANCING BOARD**

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1740-1-.01 INTRODUCTION.

The purpose of the “Wastewater Facilities Act of 1987” enacted by the General Assembly of the State of Tennessee, (amending Tennessee Code Annotated Title 4, Chapter 31, Title 7, Chapter 82 and Title 68, Chapter 13) is to facilitate statewide compliance with State and Federal water quality standards by providing local government in Tennessee with low-cost financial assistance relative to necessary wastewater facilities through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health and to establish fiscal self-sufficiency of wastewater facilities.

The Wastewater Facilities Act of 1987 creates a Wastewater Financing Board. This Board, provided for within the Department of Health and Environment, determines and ensures the financial integrity of certain wastewater facilities by effecting reasonable user rates or system efficiencies, including negotiated consolidation, of certain wastewater facilities.

Authority: T.C.A. §§4-5-202 and 68-13-1007 through 68-13-1013, inclusive. **Administrative History:** Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1740-1-.02 DEFINITIONS.

- (1) As used in these regulations:
 - (a) “Act” means the Wastewater Facilities Act of 1987.
 - (b) “Authority” means the Tennessee Local Development Authority.
 - (c) “Board” means the Wastewater Financing Board established by the Act.
 - (d) “Director” means the Director of the Division of Construction Grants and Loans.
 - (e) “Local government” means a county, incorporated town or city, metropolitan government, or state agency which has authority to administer a wastewater facility, or any combination of two (2) or more of the foregoing acting jointly to construct a wastewater facility. “Local government” shall also mean any utility district created pursuant to Tennessee Code Annotated, Title 7, Chapter 82, existing on July 1, 1984, and which operates a wastewater facility, and also includes such utility district created after July 1, 1984, if such utility district operates a wastewater facility comprised of at least five hundred (500) customer connections.

(Rule 1740-1-.02, continued)

- (f) “Wastewater facility” means any facility, including the reserve capacity thereof, whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of wastewater, including treatment or disposal plants, interceptor, outfall, and outlet sewers, pumping stations, equipment and furnishings which are necessary to accomplish the foregoing purposes. “Wastewater facility” shall also include best management practice projects for controlling non-point source of water pollution, failed innovative/alternative wastewater construction projects and the planning or replanning requirements of designated management authorities.

Authority: T.C.A. §§4-5-202 and 68-13-1007 through 68-13-1013, inclusive. *Administrative History:* Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1740-1-.03 WASTEWATER FINANCING BOARD: COMPOSITION, CONFLICT OF INTEREST, DUTIES AND AUTHORITY, PROCEDURE, RECORDS, TECHNICAL SECRETARY.

(1) Composition.

- (a) The Wastewater Financing Board shall be composed of the following seven (7) members:

1. Commissioner, Department of Health and Environment, or his designee, who shall serve as Board chairman.
2. Comptroller of the Treasury, or his designee.
3. One (1) member appointed by the Governor who shall represent the municipalities of the State.
4. One (1) member appointed by the Governor who shall represent the utility districts of the State.
5. One (1) member appointed by the Governor who shall represent the environmental interest of the State.
6. One (1) member appointed by the Governor who shall represent the minority citizens of the State and who has experience in government finance and who is not a State employee.
7. One (1) member appointed by the Governor, who shall represent the manufacturing interests in the State.

(b) Term of Appointments and Vacancies.

1. Board members shall serve for a three (3) year term expiring on June 30th except as designated herein, but continuing to serve until a successor has been appointed; or until the Board member has been reappointed.
2. Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term.
3. Board members may be reappointed, but they do not automatically succeed themselves.
4. Appointments to the Board for the remainder of unexpired terms and subsequent appointments shall be representative as stipulated in T.C.A. §68-13-1008 (b).

(Rule 1740-1-.03, continued)

5. The terms of the Board shall be staggered in accordance with the Act.

(c) Quorum, Conflict of interest, Expenses.

1. Four (4) Board members shall constitute a quorum and a majority of those present and voting shall be required for a determination by the Board.
2. No Board member may participate in making a decision in any case involving a local government or wastewater facility in which the Board member has a direct financial interest, including a contract of employment.
3. Members of the Board shall be entitled to actual and necessary expenses incurred while engaged in the performance of official duties as authorized by the Board; however all expenses and reimbursement shall be in accordance with the provisions of the Comprehensive Travel Regulations promulgated by the Department of Finance and Administration.

(d) Records.

1. The Board shall keep complete and accurate records of proceedings.
2. Records will be located in the office of the Director and open to public inspection.

(e) Technical Secretary.

The Director shall serve as Technical Secretary to the Board and be responsible for minutes and other duties as required.

(2) Duties and Authority.

- (a) The Board shall meet to adopt, modify, repeal and promulgate rules in accordance with the Uniform Administrative Procedures Act compiled in Tennessee Code Annotated, Title 4, Chapter 5, and after due notice, to enforce rules and regulations which the Board deems necessary for proper administration of T.C.A. §§68-13-1007 through 68-13-1012, inclusive, of the Act.
- (b) The Board shall conduct all meetings in accordance with the Public Meetings Act compiled in Tennessee Code Annotated, Title 8, Chapter 44.
- (c) The Board shall investigate and determine the financial condition of wastewater facilities under its jurisdiction.
- (d) Generally Accepted Accounting Principles and the interpretations of the Comptroller shall be used by the Board.
- (e) For those wastewater facilities described in T.C.A. §68-13-1010(a), the Board shall be authorized:
 1. to effect the adoption of user rates necessary for the self-sufficiency of certain wastewater facilities and negotiate the consolidation of certain wastewater facilities;

(Rule 1740-1-.03, continued)

2. to subsidize from appropriations made to it, the repair or improvement of the deficit wastewater facility as an incentive for consolidation in negotiating any consolidation under the part;
3. to ameliorate, from appropriations made to it, the burden of rate increases affected under this part borne by low-income customers through the establishment and administration of a declining rate subsidy program that shall not continue any longer than two (2) years;
4. to issue subpoenas, administer oaths and take testimony.
 - (i) In case of refusals to obey a notice of hearing or subpoena issued by the Board, the Chancery Court of Davidson County shall have jurisdiction upon application of the Board.

(3) Procedures.

- (a) Within sixty (60) days from the time an audit of a wastewater facility is filed with the comptroller of the treasury, the comptroller shall file with the Board the audit report of a wastewater facility which has a retained earnings deficit or has an operating deficit for a period of three (3) consecutive years, or is in default on any of its debt instruments. For these purposes, wastewater facility also shall include any publicly owned waterworks system utilizing a single bookkeeping system for both a waterworks and wastewater facility.
- (b) Within sixty (60) days from the receipt of the comptroller's audit report, the Board shall schedule a hearing to determine whether the wastewater facility described in the report is likely to continue in a deficit position. This initial hearing shall not be a contested case within the meaning of T.C.A. §4-5-101 *et seq.*, but rather one that is legislative in nature.
 1. Hearings shall be set according to the following criteria:
 - (i) severity of pollution threat as documented by the Tennessee Department of Health and Environment;
 - (ii) default on debt; and
 - (iii) ratio of retained earnings deficit to the wastewater facility's annual income.
 2. Notification to the responsible party for management of the deficit facility shall be by certified mail.
- (c) Upon a determination that the wastewater facility is likely to remain in a deficit position, the Board may order the management of the wastewater facility to adopt and maintain user rate structures necessary to:
 1. fund current operation, maintenance, principal and interest obligations within 12 months;
 2. resolve any default on indebtedness within 12 months unless otherwise specified by the Board;
 3. fund depreciation in 1-3 years; and/or

(Rule 1740-1-.03, continued)

4. liquidate in an orderly fashion any retained earnings deficit within 5-10 years unless otherwise specified by the Board.
- (d) In the determination of an equitable user rate, the review by the Board will include but not be limited to the following factors:
1. When was and how much was last rate increase.
 2. Average user rates for commercial and residential users.
 3. Average median household income.
 4. Typical cost of similar treatment process.
 5. Sewer Use Ordinance.
 6. Ratio of minimum bills to total bills.
 7. Number of users.
 8. Ratio of water processed to water billed.
- (e) After the initial hearing, the management of the wastewater facility may request a formal contested case hearing if the management is dissatisfied with the results of the initial hearing. This formal contested case hearing shall be in accordance with T.C.A. §§68-13-1010(b) and 4-5-301 *et seq.*
- (f) In the event the Board determines user rate increases will be insufficient to cure the wastewater facility's deficit, or such increased rates will be to the economic detriment of the local government served by the wastewater facility, the Board may negotiate the consolidation of the deficit wastewater facility with another facility which, in the determination of the Board is best suited to operate the deficient facility. Such consolidation shall be upon those terms as agreed upon by all of the affected parties.
1. Prior to the consolidation of any wastewater facility pursuant to this part, the Board shall hold a public hearing for all interested parties to such consolidation at a place convenient to such parties at least sixty (60) days prior to the effective date of such consolidation. Notice of such public hearing shall be published in a newspaper of general circulation in the affected area not later than ten (10) days prior to the hearing.
 2. If the parties to consolidation fail to reach an agreement within two hundred and seventy (270) days from the commencement of negotiations or proceedings are otherwise terminated, the Board will take action to effect the legislative intent of financially self-sufficient wastewater facilities.

Authority: T.C.A. §4-5-202 and 68-13-1007 through 68-13-1013, inclusive. **Administrative History:** Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1740-1-.04 APPEALS.

- (1) Any order or ruling of the Board shall become final unless the parties named therein request by written petition a hearing before the Board, no later than 30 days after date such order or ruling is served pursuant to the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5, Part 3.

(Rule 1740-1-.04, continued)

- (2) Any appeal hearing may be conducted by the Board at a regular or special meeting by any member, or panel of members, or administrative judge as designated by the Chairman to act on the Board's behalf.

Authority: T.C.A. §§4-5-202 and 68-13-1007 through 68-13-1013, inclusive. **Administrative History:** Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.